

Interrogatory No. 11, Aug. 11, 2022 (Ex. 7)

Definitions:

The “Book” means the publication entitled The Joseph H. Pilates Archive Collection: Photographs, Writings and Designs; and

The “Collection” means “The Original and New Pilates Photo Collection,” Copyright Reg. No. 0000242067.

Interrogatory No. 11. Provide the basis for any theory or calculation of damages that Plaintiff contends it is entitled to recover from Defendants. A complete answer should:

- (a) State each of Plaintiff’s bases for seeking damages (e.g., does Plaintiff contend it is entitled to collect damages on a theory of lost profits, reasonable royalty, price erosion, disgorgement, statutory damages, or any other basis);
- (b) State the total dollar amount of damages Plaintiff contends it is entitled to recover for each basis for seeking damages described in sub-topic (a);
- (c) Describe how such damages are computed, including, if appropriate, identification of all of Plaintiff’s goods or services for which lost profits or price erosion damages are claimed, and the rate of any royalty which Plaintiff contends is reasonable and how such rate is computed, including by identifying information Plaintiff contends is relevant to determining such royalty;
- (d) Identify any license that Plaintiff contends is relevant to establishing the rate of any royalty which Plaintiff contends is reasonable;
- (e) State whether Plaintiff contends it is entitled to prejudgment interest as to the damages it seeks, and if so, identify the prejudgment interest rate, how such rate is computed, and the total amount of prejudgment interest that Plaintiff seeks.

Plaintiff’s Response, Sept. 10, 2022 (Ex. 8)

Response: Plaintiff objects to this Interrogatory on the basis that requires legal conclusions, is a compound interrogatory consisting of a number of interrogatories. Plaintiff further objects to this interrogatory because it is premature, and discovery is in progress.

Plaintiff notes in partial response that its Etsy store, where various copyrighted items are marketed, sales have substantially reduced since the onset of

this litigation and the commencement of social media postings by or on behalf of Defendants and this action, from approximately \$3000 per month average to \$1000 per month average. Various licensing agreements for use of photographs are or have been provided.

Letter from Troy to Knull, Oct. 4, 2022 (Ex. 9)

Interrogatory No. 11.

Your objection that this interrogatory “requires legal conclusions, is a compound interrogatory consisting of a number of interrogatories, “and is “premature, and discovery is in progress” are issues you will need to take up with the Magistrate. Discovery commenced on June 28 with Initial Disclosures, and Interrogatories were required to be served by August 26, 2022. These interrogatories were timely served.

The answer provided by your client is nonresponsive and inadequate. Claiming that your client has suffered a reduction in sales as the result of your client suing the Defendants and the consequent negative publicity fails to provide the basis for any theory of damages that your client contends it is entitled to recover.

We require a complete answer to Interrogatory No. 11.

Letter from Knull to Troy, Oct. 11, 2022 (Ex. 10)

INTERROGATORY 11 DISCUSSION

Frankly, I do not know what to say about this absurd objection to Plaintiff’s response. I am well aware of the deadlines in discovery, but discovery in federal court is always an ongoing affair in which responses are supplemented. Indeed, you have made a Third Request for documents recently and there will be more requests and discovery activities. We shall provide under Confidentiality (as you seem to share all responses with the Transparency Project) the exact business downturn which has resulted, Plaintiff asserts, from the constant lies, disparagement and half truths about Plaintiff being promulgated to this day. It will be up to a fact finder eventually.